

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PERFECT DENTAL, PLLC, ZODIAC DENTAL, PLLC
and SMOOTH DENTAL, PLLC,

Plaintiffs-Counterdefendants,
(collectively the "Dental P.C. Defendants")

-against-

ALLSTATE INSURANCE COMPANY, and
STATE FARM AUTOMOBILE INSURANCE
COMPANY (sued by Smooth Dental Only),

Docket Nos.:
CV 04 - 0586 (DLI) (CLP)
CV 04 - 0588 (DLI) (CLP)

Defendant-Counterclaim Plaintiffs,
Defendant-Third-Party Plaintiffs,

-against-

ADI SERVICES, INC., et. al.

Third-Party Defendants.

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DECLARATION OF BARRY I. LEVY

Barry I. Levy, pursuant to 28 U.S.C. §1746, hereby declares, as follows:

1. I am a member of the law firm of Shapiro, Beilly, Rosenberg, Aronowitz, Levy & Fox, LLP. I have knowledge of the facts set forth in this declaration and would testify as to them in a Court if called upon to do so.

2. This declaration is submitted on behalf of Allstate Insurance Company ("Allstate") and State Farm Mutual Automobile Insurance Company ("State Farm")(collectively referred to as the "Insurers") in support of their joint motion for summary judgment against Perfect Dental Care, P.C., Zodiac Dental, PLLC, and Smooth Dental, PLLC (collectively referred to as the Dental PCs") on their claims for declaratory relief, and for summary judgment

against the Dental PCs and Third-Party Defendants Dmitriy Volotsenko, DDS, Zinovy "Zack" Kerzhner, Pavel Markov and Victor Ushumirsky (the "Third-Party Defendants") on their claims for common law fraud and unjust enrichment.

3. Attached as Exhibit "1" are sample bills submitted to the Insurers bearing the signature stamps of dentists that were named as third-party defendants in this action.

4. Attached as Exhibit "2" are the relevant pages from the examination under oath of Dmitriy Volotsenko, DDS, conducted on February 5, 2003, continued on March 19, 2003 and concluded on April 28, 2003.

5. Attached as Exhibits "3" through "11" are example claim summaries from claims submitted by the Dental PCs illustrating that the Dental PCs billed the Insurers for 8 units of physical therapy on every day that the Clinic also billed the Insurers 8 units of physical therapy.

6. Attached as Exhibit "12" is a true copy of Ground Rule 11 of the Physical Medicine Section of the Workers' Compensation Fee Schedule.

7. Attached as Exhibit "13" is a true and accurate copy of the affidavit of Michael Feldstein, DDS.

8. Attached as Exhibit "14" is a true and accurate copy of the affidavit of Rhonda Billings, DDS.

9. Attached as Exhibit "15" is a true and accurate copy of the affidavit of Michael Kokolis, DDS.

10. Attached as Exhibit "16" is a true and accurate copy of the affidavit of Maria Apergis, DDS.

11. Attached as Exhibit "17" is a true and accurate copy of the affidavit of Albina Polt, DDS.

12. Attached as Exhibit “18” are the relevant pages from the deposition of Stanley Frankel, DDS.

13. Attached as Exhibit “19” are the relevant pages from the responses to the Insurers’ notice to admit served on behalf of Stanley Frankel, DDS.

14. Attached as Exhibit “20” are the relevant pages from the interrogatory responses served on behalf of Stanley Frankel, DDS.

15. Attached as Exhibit “21” are the relevant pages from the deposition of Maria Kane, DDS.

16. Attached as Exhibit “22” are the relevant pages from the responses to the Insurers’ notice to admit served on behalf of Maria Kane, DDS.

17. Attached as Exhibit “23” are the relevant pages from the interrogatory responses served on behalf of Maria Kane, DDS.

18. Attached as Exhibit “24” are the relevant pages from the deposition of Richard Rosenthal, DDS.

19. Attached as Exhibit “25” are the relevant pages from the responses to the Insurers’ notice to admit served on behalf of Richard Rosenthal, DDS.

20. Attached as Exhibit “26” are the relevant pages from the interrogatory responses served on behalf of Richard Rosenthal, DDS.

21. Attached as Exhibit “27” are the relevant pages from the deposition of Theodore Kirit, DDS.

22. Attached as Exhibit “28” are the relevant pages from the responses to the Insurers’ notice to admit served on behalf of Theodore Kirit, DDS.

23. Attached as Exhibit “29” are the relevant pages from the interrogatory responses served on behalf of Theodore Kirit, DDS.

24. Attached as Exhibit “30” are the relevant pages from the deposition of Nodari Davitiashvili, DDS.

25. Attached as Exhibit “31” are the relevant pages from the responses to the Insurers’ notice to admit served on behalf of Nodari Davitiashvili, DDS.

26. Attached as Exhibit “32” are the relevant pages from the interrogatory responses served on behalf of Nodari Davitiashvili, DDS.

27. Attached as Exhibit “33” are the relevant pages from the deposition of Frederick Barry Sands, DDS.

28. Attached as Exhibit “34” are the relevant pages from the responses to the Insurers’ notice to admit served on behalf of Frederick Barry Sands, DDS.

29. Attached as Exhibit “35” are the relevant pages from the interrogatory responses served on behalf of Frederick Barry Sands, DDS.

30. Attached as Exhibit “36” are the relevant pages from the deposition of Michael Pilar, DDS.

31. Attached as Exhibit “37” are the relevant pages from the responses to the Insurers’ notice to admit served on behalf of Michael Pilar, DDS.

32. Attached as Exhibit “38” are the relevant pages from the interrogatory responses served on behalf of Michael Pilar, DDS.

33. Attached as Exhibit “39” are the relevant pages from the interrogatory responses served jointly on behalf of Medco, ADI and Levinton.

34. Attached as Exhibit “40” are the corporate tax returns filed by Smooth Dental, PLLC.

35. Attached as Exhibit “41” are the corporate tax returns filed by Zodiac Dental, PLLC.

36. Attached as Exhibit “42” are the corporate tax returns filed by Perfect Dental Care, P.C.

I declare the truth of the above subject to the penalties of perjury. Executed at New York, New York on June 23, 2006.

/s/ Barry I. Levy
Barry I. Levy (BL 2190)